the Court of the United States

OCTOBER TERM, 1970

No. 425

FFELIN & CO. and BEITZELL & CO., INC.,

Petitioners,

v.

THE UNITED STATES,

Respondent.

PETITION FOR REHEARING

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IN THE

Supreme Court of the United States

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SCHIEFFELIN & CO. and BETTZELL & CO., INC.,

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v.

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PETITION FOR REHEARING

The petition for certiorari in this case was denied on October 19, 1970 and permission was granted to permit the filing of a petition for rehearing on or before December 14, 1970.

This petition for rehearing is filed under paragraph 2 of Rule 58 to present for consideration an intervening circumstance of at least substantial effect. It now appears that the issue in this case may be submitted to the International Court of Justice for determination.

Following the denial of the petition for certiorari in this case, counsel has been informed that Her Majesty's Government may have to consider an international-juridical resolution of this matter and that it would be of great assistance to have the decision of the highest court of the United States on the issue involved. A copy of the letter of December 10, 1970 from the British Embassy to counsel is annexed hereto.

Since the International Court of Justice is the only forum to which both the United States and the United Kingdom have given their consent for the settlement of international disputes of this type counsel assumes that it is to that body that Her Majesty's Government would turn for an "international juridical resolution" of this matter. That Court has jurisdiction to determine whether, as Her Majesty's Government believes, the United States is violating the terms of the British Treaty in persisting in the wine gallon method of assessment on imported spirits.

This new development raises important additional reasons for Supreme Court review. As far as the jurisdiction of the World Court is concerned, local remedies were exhausted to whatever extent is necessary when this Court denied certiorari on October 19, 1970. (See *Interhandel* cases, *Societe Internationale Pour Participations Industrielles v. Rogers*, 357 U.S. 197 (1958); *Switzerland v. United States* [1959] I.C.J. Rep. 6). Nevertheless, counsel believes that it would be inappropriate from the point of view of the United States to have the matter reviewed by the International Court of Justice in its present posture — that is, on the basis of the opinion of the Court of Customs and Patent Appeals, an intermediate court of limited and technical jurisdiction.

In the present case a decision on the merits by this Court would be of great assistance to the International Court of Justice even though it were adverse to the position of the petitioners. The opinion of this Court would clarify the issues of treaty interpretation and application and thereby

facilitate the consideration of these matters by the International Court of Justice. While analogies to relationships between domestic courts have certain inherent difficulties, it should nevertheless be noted that this Court has traditionally remanded cases to state and federal appellate courts in recognition of the assistance they might provide by ruling upon questions that they had not previously considered. See e.g. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100 (1969); *Rosenberg v. Fleuti*, 374 U.S. 449 (1963).

If on the other hand, the Court should grant the petition and decide the question favorably to the petitioners, recourse by Her Majesty's Government to the International Court of Justice would become unnecessary. There is thus presented an additional reason for this Court to grant the petition for certiorari. This interest in eliminating the necessity of an International Court decision has a domestic corollary in the doctrine of abstention. That principle of judicial restraint arises in part from the recognition that disputes are better settled at the local level thereby avoiding "'needless friction' between federal pronouncements and state policies". *Reetz v. Bozanich*, 397 U.S. 82, 87 (1970) quoting *Railroad Commission v. Pullman Co.*, 312 U.S. 496 (1941). The same policy should favor the avoidance of a potentially unnecessary decision by the International Court of Justice.

For these reasons, petitioners herein respectfully request that the petition for rehearing be granted.

Respectfully submitted.

Edwin G. Martin

December 11, 1970

BRITISH EMBASSY
WASHINGTON

10 December, 1970.

Dear Mr. Martin,

Please refer to Schieffelin & Co. et al. v. The United States, Supreme Court of the United States, October Term, 1970 - No. 425. Her Majesty's Government's deep interest in the outcome of that case was evidenced by its briefs amicus curiae filed with both the Court of Customs and Patent Appeals and in support of the Petition for Certiorari denied October 19, 1970. After consultation with this Embassy you sought and obtained an extension of time in which to file a petition for rehearing until December 14, 1970.

I have now been instructed by Her Majesty's Government in the United Kingdom to inform you that the Schieffelin proceedings concern a matter which has for so long been in dispute between the two Governments that Her Majesty's Government would welcome consideration of it by the highest court in the United States. In this connection, and in view of the importance attached to the outcome of this matter, I have been further authorised to state that Her Majesty's Government may have to consider an international juridical resolution of the matter and it would

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be of great assistance to have the decision of the highest court in the United States on the issue involved.

You are free to make known these views of Her Majesty's Government in your Petition for Rehearing.

Yours sincerely

G.E. Millard

(G.E. Millard)
H.M. Chargé d'Affaires